

McGeeney, Kristen R (DRL)

RELEASED IN PART

From: Brancato, Gilda M(WashDC)
 Sent: Thursday, September 28, 2006 11:13 AM
 To: Noyes, Julieta V (DRL); McGeeney, Kristen R (DRL)
 Subject: FW: Proposed forced disappearances convention

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Attachments: LEGAL-#18367-v1-Disappearances_treaty_USG_Final_STatement.DOC

Per Lynn's out of office email. So nice to be in touch with you again!!

From: Brancato, Gilda M
 Sent: Thursday, September 28, 2006 11:08 AM
 To: Harris, Robert K; Aswad, Evelyn M; Haines, Avril D; Wing, Erik A
 Cc: 'Lagon, Mark P(Main State Rm 6323)'; Kovar, Jeffrey D; Barton, Paula J; 'Sicade, Lynn M (DRL)'; Witten, Samuel M
 Subject: Proposed forced disappearances convention

You may have seen the front page article in the Washington Post this morning on the long and dirty civil war in Guatemala, during which 40,000 people disappeared. This was the backdrop of our five treaty negotiating sessions (2003-2005), where families of the disappeared traveled to Geneva from Argentina, Bolivia, Algeria, the Philippines and elsewhere to bear witness to this scourge.

Further to our L meeting yesterday and as additional background on the legal issues raised by the draft text, you are all familiar with the flaws in the treaty text, including:

- An overbroad and vague definition lacking an express scienter (mens rea) requirement.
- Prohibition of a defense of obedience to superior orders.
- "Found in " jurisdiction.
- Expansion of the principle of non-refoulement.
- Inclusion of a "right to the truth" untied to freedom of information or other anchor.
- An unclear operative provision on crimes against humanity.
- Broad access to places of detention and other investigative powers.
- Confusing statute of limitations language.
- Creation of a new treaty monitoring body.

As you know, we repeatedly objected to the flaws throughout the negotiations and highlighted them in our closing statement (attached below and made part of the treaty "travaux" - see Fifth Report of the Working Group Annex II pages 48-49). Additionally, to make the record clear on our legal concerns during HRC consideration of the instrument in June (and per an IO-DRL-L/HRR request), Mission Geneva posted on the mission website selected textual revisions proposed by the USG during negotiations.

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